135 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PJM Interconnection, L.L.C. and Public Service Electric and Gas Company — Docket Nos. ER11-3352-000 and ER11-1985-001

ORDER ON TRANSMISSION RATE INCENTIVES
AND REQUEST FOR CLARIFICATION

(Issued June 13, 2011)

1. On April 14, 2011, PJM Interconnection, L.L.C. (PJM), on behalf of Public Service Electric and Gas Company's (PSE&G), submitted tariff revisions[1] pursuant to sections 205 and 219 of the Federal Power Act (FPA)[2] and Order No. 679,[3] to implement requested transmission rate incentives for five separate projects: (1) the Burlington – Camden Project; (2) the West Orange Project; (3) the Mickleton-Camden-Gloucester Project; (4) the Middlesex Switch Rack Project; and (5) the Bayonne – Marion Project (collectively, the Projects). Specifically, PSE&G requests: (1) inclusion of 100 percent of Construction Work in Progress (CWIP) in rate base; (2) authorization to recover 100 percent of all prudently-incurred development and construction costs if any of the Projects are abandoned or cancelled, in whole or in part, for reasons beyond its control (abandonment); and (3) authority to assign these incentives to an affiliate, if construction and/or ownership of any of the Projects are assigned to such affiliate. For the reasons discussed below, we grant the requested incentives for the Burlington-Camden, the West Orange, and the Mickleton-Camden-Gloucester Projects and deny them for the Middlesex Switch Rack and the Bayonne-Marion Projects. We accept PSE&G's proposed tariff sheets for filing, effective June 14, 2011, as requested, as applicable to the three projects for which we grant incentives.

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[1] PSE&G filed a revised Attachment 7, Schedule H-10A to the PJM Open Access Transmission Tariff (OATT).

[2] 16 U.S.C. §§ 824d, 824s (2006).

[3] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

2. On January 31, 2011, PJM filed, on behalf of PSE&G, a request for clarification in a related docket. We deny PJM's request for clarification as discussed in the body of the order.

I. Background

3. PSE&G is a wholly-owned subsidiary of Public Service Enterprise Group Inc. PSE&G states that the vast majority of its transmission system is located in the State of New Jersey, where it is responsible for providing transmission and distribution service to approximately 1.7 million natural gas customers and approximately 2.1 million electric customers.[4] PSE&G is a transmission-owning member of the PJM, a regional transmission organization (RTO) and the PJM OATT governs transmission service over PSE&G's transmission facilities.

4. PSE&G recovers its annual revenue requirement for transmission service provided within PJM's PSE&G zone through a formula rate. The formula rate is set forth in Schedule H-10A of PJM's OATT.[5] On November 1, 2010, PSE&G submitted four of the Projects for incentive rate approval in Docket No. ER11-1985-000.[6] The related December 30 Order[7] found that the four projects satisfied the threshold requirement of section 219, but it denied the incentive request without prejudice to PSE&G refiling to demonstrate how each of the Projects meets the nexus requirement that the Commission established in Order No. 679.

5. On January 31, 2011, PSE&G asked the Commission clarify that the Commission did not intend in the December 30 Order to require that each applicant view each transmission project in a vacuum and ignore the financial impacts of risks other transmission projects the applicant is undertaking. PSE&G also requested that the Commission clarify that it is appropriate for an applicant to take into account its total transmission construction budget and other relevant company-wide financial metrics in justifying requested incentives on a project-by-project basis.

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[4] Filing at 5.

[5] *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303 (2008). PSE&G's formula rate currently incorporates a return on equity (ROE) of 11.68 percent, which is comprised of a base ROE of 11.18 percent and a 50 basis-point adder for continued membership in PJM.

[6] The Mickleton-Camden-Gloucester project was added in this docket.

[7] *PJM Interconnection, L.L.C.,* 133 FERC ¶ 61,273 (2010) (December 30 Order).

II. Filing

6. PSE&G requests transmission rate incentives for five projects that were approved as baseline upgrades through the PJM Regional Transmission Expansion Plan (RTEP) process.[8] PSE&G states that PJM's 2009 and 2010 RTEP processes identified numerous reliability violations in the PSE&G zone starting in 2013, and that PJM reviewed different alternatives to address these issues. In the end, PJM selected several baseline upgrades in the PSE&G zone, and PSE&G requests incentives for five of the upgrades in the instant filing. Specifically, PSE&G requests for each of the Projects: (1) inclusion of 100 percent of CWIP in rate base; (2) abandonment if any of the Projects are abandoned or cancelled, in whole or in part, for reasons beyond its control; and (3) authority to assign these incentives to an affiliate, if construction and/or ownership of any of the Projects are assigned to such affiliate.

A. Requested Incentives

1. CWIP

7. PSE&G requests inclusion of 100 percent of CWIP in rate base. PSE&G states that this incentive will allow PSE&G to recover financing costs before the Projects go into service. PSE&G argues that this will improve cash flow and provide assurance to lenders that PSE&G will be able to cover the interest on its debt during the construction period. PSE&G contends that this assurance will assist PSE&G with financing by improving the coverage ratios used by rating agencies to determine credit quality. PSE&G argues that inclusion of 100 percent of CWIP in rate base will result in better rate stability for customers by avoiding "rate shock" that could occur if CWIP is not permitted in rate base. According to PSE&G, including 100 percent of CWIP in rate base will also reduce the cost of each Project, thus saving $280 million overall in nominal terms and $41 million on a present value basis.[9]

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[8] PJM is responsible for planning the enhancement and expansion of the PJM transmission system to ensure reliability. It identifies transmission system upgrades and enhancements necessary to ensure reliability through the RTEP. The RTEP is based on an analysis of applicable contingencies and reliability criteria, operational performance of the regional transmission system, and economic and environmental factors. The contingencies studied and the criteria used to determine reliability violations are based on PJM load and/or generator deliverability criteria and North American Electric Reliability Corporation (NERC) planning standards.

[9] Filing at 69.

8. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized allowance for funds used during construction (AFUDC) and corresponding amounts of CWIP in rate base.[10] To satisfy this requirement, PSE&G contends that it has accounting procedures and controls in place to ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP for the five projects for which it is seeking 100 percent CWIP in rate base. PSE&G states that it maintains the accounting for both the electric distribution and transmission plant assets and will use the Project Systems Module of SAP during the construction period. PSE&G asserts it will use a unique work breakdown structure (WBS) element for project identification and work order numbers to accumulate construction costs for each individual project in accordance with Electric Plant Instruction 3, Components of Construction Costs, of the Uniform System of Accounts and PSE&G's capitalization policy. PSE&G states that WBS is a tool to monitor actual and budgeted costs and includes an interest profile control indicator that allows PSE&G to ensure that only qualifying projects calculate AFUDC. PSE&G asserts that the interest profile indicator assigned to all unique WBS elements created for the five projects will be set to not calculate AFUDC on the Projects.

9. Additionally, PSE&G states that consistent with Sarbanes-Oxley 404 requirements (controls FA017 and FA047), its Property Accounting group performs monthly reviews of AFUDC charges to ensure that only eligible projects receive AFUDC.[11]

2. Abandonment

10. PSE&G requests recovery of 100 percent of prudently incurred costs in the event that the Projects are abandoned as a result of factors beyond its control. PSE&G states that the Projects face numerous federal, regional, and state regulatory approvals and permits that may require consultation with a number of governmental agencies. PSE&G argues that not receiving any one of these approvals could result in one of the Projects being cancelled. Furthermore, PSE&G states that each of the Projects could be cancelled or modified through PJM's RTEP if they are no longer needed due to new investments or due to merchant transmission projects.[12]

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[10] 18 C.F.R. § 35.25(f) (2011).

[11] *See* Exhibit No. PEG-2, Direct Testimony of Mr. Michael A. Wiater.

[12] Filing at 22, 25-26, 35, 37, 44, 46, 53, 55, 61, and 63.

3. Assignment of Incentives to Affiliates

11. PSE&G requests authority to assign the proposed incentives to an affiliate if construction and/or ownership of the Projects are assigned to such an affiliate. PSE&G states that it has not made a decision to make such an assignment, but would like to ensure that the requested incentives are passed through to an affiliate in case of reassignment of construction and/or ownership of any of the Projects.

B. Eligibility for Incentives

12. PSE&G acknowledges that in order to receive incentives under Order No. 679 the Projects must meet the eligibility requirement of FPA section 219 by showing that the Projects either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. PSE&G further acknowledges that, in addition to satisfying this FPA section 219 requirement, it must also show that there is a nexus between the incentive sought and the investment being made and that the total package of incentives requested is tailored to address the demonstrable risks and challenges faced in undertaking the Projects.

1. Section 219 Requirement

13. PSE&G states that the Projects are eligible for incentives under section 219 of the FPA. PSE&G argues that the Projects meet the rebuttable presumption that they qualify for transmission incentives as provided in Order No. 679 because they were approved by the PJM RTEP process as baseline upgrades that will help ensure reliability or reduce congestion.

2. Order No. 679 Nexus Requirement

14. PSE&G argues that the Projects fully satisfy the requirements for incentive rate treatment, consistent with the guidance provided in the December 30 Order, including the requirement that PSE&G demonstrate the required nexus between the requested transmission rate incentives and each of the Projects on a project-by-project basis. PSE&G states the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant, and that projects that are not routine are more likely to satisfy the nexus standard.[13] PSE&G notes that, in deciding

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[13] Filing at 14 (citing *Baltimore Gas and Elec. Co.*, 120 FERC ¶ 61,084 (2007) (*BG&E*).

whether a project is routine, the Commission stated that it will consider all relevant factors presented by the applicant, including the project's scope, its effect, and the challenges or risks faced by the project.[14]

15. PSE&G asserts that the Projects face substantial financial risks and challenges. According to PSE&G, funding projects of this size and scope will require significant outlays of cash, decreasing PSE&G's cash flow during the construction phase of the project. PSE&G explains that its annual budgeting process aggregates the cost of the five Projects for financing purposes. PSE&G anticipates that the annual capital expenditures associated with these Projects will average over $387.6 million per year.[15] PSE&G contends that meeting this level of capital expenditures will reduce their cash flows, which in turn creates liquidity concerns for lenders which could harm PSE&G's credit ratings.[16]

16. PSE&G also argues that the expenditures for the Projects will increase PSE&G's debt and burden PSE&G's financial metrics, raising the risk of a credit downgrade. According to PSE&G, strong credit ratings are important to its ability to borrow money at a lower cost, and lower credit ratings will increase PSE&G's cost of debt, which will be passed on to customers. PSE&G states that credit ratings also affect a company's access to capital markets and define its overall risk profile. Additionally, PSE&G states that internal competition for capital with other PSE&G expenditures raises additional financing challenges for PSE&G as these projects compete against other projects with potentially less risk.

17. PSE&G argues that it faces financial risks from the Projects' long lead times. PSE&G explains that some of the Projects will not be placed into service until the end of 2014 or 2015 even though PSE&G will incur significant costs in connection with those Projects immediately. PSE&G argues that the long lead times open the door to unexpected cost increases, construction delays, and continually building carrying costs. PSE&G states that when taken together, the total cost of the Projects creates a major financial burden for PSE&G. PSE&G states that it is already contributing $750 million to the Susquehanna-Roseland Line along with approximately $1.36 billion for other transmission expenditures from 2011 through 2013. Collectively, PSE&G explains, these five projects exceed 127 percent of PSE&G's gross transmission plant in service as of December 31, 2010, and 1.95 times PSE&G's current net investment in transmission plant.

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[14] *PPL Electric Utilities Corporation, et al.*, 123 FERC ¶ 61,068 at P 31 (2008) (PPL).

[15] Filing at 65.

[16] Filing, Exhibit PEG-2 at 16.

18. PSE&G argues that each project faces construction risks because it will be built in a densely populated section of New Jersey, and because they will use advanced technologies. Although PSE&G does not request separate incentives based on the use of advanced technology, PSE&G states that each project makes use of advanced technologies and that these technologies should bolster its incentive request. PSE&G states that each project faces regulatory risks resulting from the large number of permits and citing approvals required from all levels of government. PSE&G contends that the timing of the construction of the Projects must be closely coordinated with the operations and outages of electric generating stations to ensure that the stability and operational impacts are minimal. Finally, PSE&G states that the technologies that PSE&G plans to incorporate into the Projects present significant challenges of their own, including the risk that the technologies or people with the expertise to construct, test, and install them might not be available when needed by PSE&G. PSE&G also states that it faces the risk of PJM cancelling one or more of the Projects through the RTEP process if that project is no longer needed.

19. PSE&G describes each individual project and argues why it believes each project meets the nexus requirement, as follows:

a. The Burlington – Camden Project

20. PSE&G states that the Burlington - Camden Project is a baseline RTEP project replacing existing 138 kV circuits with 230 kV circuits. PSE&G maintains that the project will upgrade the Burlington, Camden, Cinnaminson, Levittown, and Cuthbert Boulevard substations to 230 kV, and install new 230 kV circuits along the route. PSE&G estimates the circuit length of the project at 35 miles, including approximately 7 miles of underground circuits, and that the project will require the reinforcement or replacement of 100 towers. PSE&G asserts that the project ensures reliability by addressing NERC Category C voltage violations. In addition, PSE&G estimates that the project will provide annual congestion benefits totaling $5 million for New Jersey Loads and another $5 million for PECO loads. This project and the Mickleton-Camden-Gloucester Plan make up PSE&G's Southern Reinforcement Plan. PSE&G states that the PJM-specified in-service date for the project is June 2014, and it is estimated to cost $381 million.

21. In its application, PSE&G states that the total cost of this project equals approximately 27 percent of its Net Transmission Plant In-Service, and that the average annual cost of this project is 67 percent of its average annual transmission investment over the past 5 years. PSE&G expects to spend up to $125 million a year for this project, a substantial increase in PSE&G's annual transmission investment.[17] PSE&G

[17] Schedule MAW-1 from Exhibit No. PEG-2A.

asserts that the underground construction on a section of the project adds construction challenges that overhead projects do not face, including the possibility of encountering unknown contaminated soil.[18]

b. The West Orange Project

22. PSE&G states that the West Orange Project is a baseline RTEP project that involves replacing existing 138 kV circuits with 230 kV circuits between PSE&G's West Orange, Roseland, and Metuchen substations. PSE&G asserts that the project will upgrade the West Orange, Marion Drive, Laurel Avenue, Fanwood, New Dover, Lafayette, and Woodbridge substations to 230 kV, and install new 230 kV circuits along the route. PSE&G estimates that the circuit length of the project is approximately 55 miles. PSE&G states that the West Orange Project will increase transfer capability into Roseland and reduce some of the power flow on the Branchburg-Reading-Roseland circuit, as well as other 230 kV circuits in the Jersey Central Power and Light (JCPL) area. PSE&G asserts that the project will resolve projected NERC Category C voltage violations. In addition, PSE&G estimates that the project will provide an average annual congestion benefit of $7 million to New Jersey loads. The PJM-specified in-service date for the West Orange Project is June 2014, and its estimated cost is $336 million.

23. In its application, PSE&G states that the total cost of this project equals approximately 24 percent of its Net Transmission Plant In-Service, and that the average annual cost of this project is 62 percent of its average annual transmission investment over the past 5 years. PSE&G expects to spend up to $114 million a year for this project, a substantial increase in PSE&G's annual transmission investment.[19] PSE&G asserts that the project crosses several miles of wetlands, including the Ashbrook Reservation, creating additional construction and citing risks.[20]

c. The Mickelton-Camden-Gloucester Project

24. PSE&G states that the Mickelton-Camden-Gloucester Project is a baseline RTEP project in which PSE&G will construct two new 230 kV underground circuits from Gloucester to Camden via Cuthbert Boulevard, and reconfigure the Cuthbert substation. Additionally, PSE&G asserts that it will install a second 230 kV overhead circuit from Mickelton to Gloucester and reconductor the existing 230 kV circuit. Also, PSE&G

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[18] Filing at 19.

[19] Schedule MAW-1 from Exhibit No. PEG-2A.

[20] Filing at 41.

states that it will reconductor its portion of the Camden – Richmond 230 kV circuit and upgrade terminal equipment at the Camden substation. PSE&G estimates that the circuit length of the Project is approximately 20 circuit miles, including approximately 8 miles of underground 230 kV circuits. As mentioned above, this Project is the second-half of the Southern Reinforcement Plan along with the Bayonne-Camden Project. PSE&G asserts that the project will resolve projected NERC Category C voltage violations. In addition, PSE&G estimates that the entire Southern Reinforcement Plan will provide an average annual congestion benefit of $10 million to New Jersey loads and $9 million to the PECO region. The PJM-specified in-service date in June 2015, and the estimated cost of the project is $308 million.

25. In its application, PSE&G states that the total cost of this project equals approximately 24 percent of its Net Transmission Plant In-Service, and that the average annual cost of this project is 62 percent of its average annual transmission investment over the past 5 years.   PSE&G states that construction of the two underground circuits presents challenges not faced in overhead projects, including the possibility of encountering unknown contaminated soil.[21]

d. The Middlesex Switch Rack Project

26. PSE&G states that the Middlesex Switch Rack Project is a baseline RTEP project in which PSE&G will construct a new 230 kV circuit from Branchburg to the Middlesex Switch Rack and build a new 230 kV substation at Middlesex. PSE&G asserts that the project will split the circuit from Branchburg to Somerville to Bridgewater into two independent circuits. The first circuit will go from Branchburg to Somerville to Bridgewater. The second circuit will be travel directly from Branchburg to Bridgewater. PSE&G estimates the circuit length of the project to be 17 miles. PSE&G states that the Middlesex Switch Rack Project will provide annual congestion benefits of $6 million in the southern Jersey Central Power & Light (JCPL) area by providing a stronger connection to Branchburg and resolve projected NERC Category C voltage violations. The PJM-specified in-service date for the Middlesex Switch Rack Project is June 2014, and it is estimated to cost $125 million.

27. In its application PSE&G states that the total cost of this project equals approximately 9 percent of its Net Transmission Plant In-Service, and that the average annual cost of this project is 24 percent of its average annual transmission investment over the past 5 years. PSE&G asserts that the project will be constructed adjacent to an

[21] Filing at 32.

active Conrail railroad spur, which creates additional risks including the need for approvals to accommodate multiple railroad crossings and that the project be constructed in staggered shifts.[22]

e. The Bayonne – Marion Project

28. PSE&G states that the Bayonne – Marion Project is a baseline RTEP project in which PSE&G will construct a new 230 kV circuit from Bayonne to the Marion substation and reconfigure the Bayonne substation. There are currently two 138 kV underground cables serving the Bayonne area load. PSE&G asserts that if these circuits are interrupted, a loss of load will occur. To remedy this situation, PSE&G proposes to construct a third circuit from Bayonne to Marion. PSE&G notes that while it will be constructed to 230 kV specifications, the circuit will initially be operated at 138 kV. PSE&G states that project consists of a 5 mile underground 230 kV circuit. The PJM-specified in-service date for the Bayonne-Marion Project is June 2013, and it is estimated to cost $137 million.

29. PSE&G states that the cables will go under two major highways and through the heavily-congested Tonelle Avenue area of Jersey City. PSE&G submits that the traffic pattern consists of 300,000 cars per day, creating a limited timeframe for construction. PSE&G asserts that the project will require the relocation of the Route 7 bridge and ramp and the planned paving of streets will occur during that same time period.[23]

f. Total Package of Incentives

30. PSE&G argues that, considered as a whole, the incentives it has requested are tailored to the specific risks and benefits of the Projects. PSE&G states that the CWIP incentive is needed to cover the carrying costs of the substantial capital expenditures required by the Projects without impairing the credit metrics of PSE&G. PSE&G states that abandonment cost recovery reduces the risk of non-recovery of the investment for projects that face many technical and regulatory hurdles over their construction and in-service dates. PSE&G also states that the incentives reduce the total revenue required from customers over the lives of the Projects both on a total and present value basis.

g. Technology Statement

31. PSE&G states that it will incorporate and deploy a series of advanced technologies that will enable the Projects to be operated as a "Smart Grid." PSE&G states that these

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[22] Filing at 50.

[23] Filing at 60.

technologies include advanced conductor configurations, gas-insulated substations, microprocessor-based relays and digital fault records, fiber optic protection and communications links, substation wide area networks, and integrated substation automation and equipment line monitoring.

III. Notice of Filing and Responsive Pleadings

32. Notice of the filings was published in the *Federal Register*, 76 Fed. Reg. 22,687 (2011), with protests and interventions due on or before May 5, 2011. FirstEnergy Service Company[24] and American Municipal Power, Inc. filed motions to intervene. The Joint Consumer Advocates[25] (JCA) and the New Jersey Board of Public Utilities (NJPBU) each filed a motion to intervene and protest. On May 13, 2010, PSE&G filed an answer to NJBPU's and JCA's protests. On June 3, 2011, JCA filed an answer to PSE&G's answer.

A. General Protests

33. NJBPU and JCA (collectively, Protestors) urge the Commission to dismiss PSE&G's filing, deny PSE&G's request for incentive rates, or, at a minimum, set this matter for a trial-type evidentiary hearing.

34. NJBPU asserts that the five projects are separate and distinct local reliability projects, proposed to relieve certain reliability criteria violations only in New Jersey. NJBPU asserts that approval of a project through the RTEP process does not automatically entitle transmission owners to incentive rates.

35. Protestors argue that the Projects are routine projects that a utility is expected to undertake in the ordinary course of expanding the system to provide safe and reliable transmission service. Protestors assert that the 230 kV Projects are of considerably smaller scale than other large scale transmission backbone projects for which PSE&G has received incentive rate treatment in the past. Protestors also point out that the Projects

[24] FirstEnergy Service Company intervened on behalf of The Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, The Toledo Edison Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, FirstEnergy Solutions Corp., American Transmission Systems, Incorporated and Trans-Allegheny Interstate Line Company.

[25] The Joint Consumer Advocates are the New Jersey Division of Rate Counsel, the Pennsylvania Office of Consumer Advocate, the Delaware Division of the Public Advocate, and the Maryland Office of People's Counsel.

are being constructed only in New Jersey, and therefore only require approval from agencies in the federal government and New Jersey. Protestors argue that the coordination of planned outages between PJM transmission owners is standard and therefore not a construction risk. Protestors argue that there are no significantly new, risky or untested technologies involved in the Projects, and NJBPU notes that PSE&G has not even fully committed to incorporating these technologies into any of the Projects.

36. JCA notes that PSE&G signed the Consolidated Transmission Owner's Agreement which obligates them to construct, own, or finance projects assigned to them by PJM's RTEP process. JCA argues that under the logic of PSE&G's incentive request, any project which provides both reliability and congestion benefits should receive incentives, potentially adding billions of dollars to the energy costs already faced by electricity consumers.[26]

37. NJBPU argues that PSE&G's 2008 Moody's report, which PSE&G relies on in its filing, does not accurately represent the current financial climate and rating agency views. NJBPU instead interprets PSE&G's 2010 Moody's report to indicate that PSE&G will not suffer any downgrade in its credit rating in the absence of incentives and concludes that PSE&G has not demonstrated a need for CWIP. NJBPU also points out that the 2010 Moody's report notes that the delay of the Susquehanna-Roseland line provides PSE&G an opportunity to stage its capital expenditures more gradually, reducing some of the financial strain resulting from that project.

38. NJBPU states that AFUDC is a sufficient mechanism for rate recovery and that providing CWIP gives PSE&G a no-bid, cost-plus contract to build transmission infrastructure. JCA requests that the Commission deny PSE&G the authority to transfer the incentives to an affiliate because PSE&G does not explain what demonstrable risks this request addresses.

39. JCA states that, if abandonment of the Projects does occur and it can be demonstrated that the level and timing of PSE&G's expenditures were prudent, then a proceeding should be undertaken to determine whether PSE&G should be allowed to recover those costs.

B. <u>Project Specific Protests</u>

40. NJBPU argues that PSE&G does not explain why the Burlington-Camden Project currently provides congestion benefits, while in the prior ER11-1985-000 proceeding, PSE&G made no such claim.

[26] JCA Protest at 13.

41. NJBPU states that the West Orange Project is a routine transmission upgrade undertaken within the normal scope of a utility provider's daily operations. Furthermore, NJBPU argues that a portion of the project was completed prior to PSE&G's filing in this matter. NJBPU argues that the project consists of upgrades to a specific line, and that there is nothing extraordinary about PSE&G making these upgrades. NJBPU further states that the project provides PSE&G an opportunity to update out-of-date technology which clearly falls under FERC's definition of routine maintenance.

42. NJBPU argues that the while the Mickleton-Camden-Gloucester Project and the Burlington-Camden Project together make up the Southern Reinforcement Plan, they do not constitute a single project. NJBPU points out that both projects are constructed to relieve different NERC violations, and that the cancellation of one project would not necessarily affect the other. NJBPU states that granting abandonment would allow the company to recover costs associated with any decision to terminate any individual portion of the Southern Reinforcement Plan.

43. NJBPU states that the Middlesex Switch Rack Project resolves voltage violations for four highly localized sub-regions inside PSE&G's service territory. NJBPU asserts that there are minimal siting risks as the project will replace existing infrastructure on property already owned by PSE&G. NJBPU argues that reducing congestion to this small load pocket is routine work without notable regional benefits.

44. NJBPU states that the Bayonne-Marion Project is designed to enhance transmission capabilities for a localized load pocket and does not provide any region-wide benefits. NJBPU argues that the permits are mostly required from two municipalities, and thus PSE&G's concerns about the large number of permits appear to be overstated. NJBPU argues that PSE&G requested that PJM modify the project to a 230 kV from the original 138 kV approved by PJM, even though PSE&G knew the project would cost more, but would still be operated at 138 kV in the near term.

C. PSE&G's Answer

45. In its answer, PSE&G states that in the December 30 Order the Commission found that four of the five projects met the rebuttable presumption established in Order No. 679 for satisfying the section 219 threshold requirement, and that the fifth project qualifies under the same criteria. PSE&G argues that all five projects satisfy the nexus test as they are non-routine consistent with a recent Commission order involving incentives requested by Oklahoma Gas and Electric Company.[27] PSE&G states that these five projects differ from the 14 other projects that the PJM RTEP process directed PSE&G to build, which

[27] *Oklahoma Gas and Electric Company*, 135 FERC ¶ 61,038 (2011) (OG&E Order).

are smaller in size and scope and face fewer risks and challenges, and for which PSE&G did not request incentives.

46. PSE&G argues that the Protestors provided no evidence that it is easier to receive permits for rebuilding or upgrading lines than it is to build new ones. PSE&G maintains that during upgrades, towers will be removed and new towers will be constructed, engendering potential impacts and triggering the permitting process.

47. PSE&G states that it is currently building many projects besides the Susquehana-Roseland Project, and that these projects also create financial risks. PSE&G points out that the relative size of the projects to PSE&G's net transmission plant in service is consistent with other cases where FERC provided the CWIP incentive. Furthermore, PSE&G argues that CWIP does not place the risk of the projects on ratepayers, but instead affects the timing of cost recovery.

48. PSE&G asserts that protestors' requests for evidentiary hearings should be rejected because there are no material facts in dispute. PSE&G also maintains that requiring a hearing to determine the prudency of expenditures if PSE&G files for abandonment deviates from Commission policy and constitutes a collateral attack on Order No. 679 and Order No. 679-A.

49. PSE&G states that the Commission has permitted reassignment of incentives to an affiliate in multiple cases without requiring an explanation as to why or how it addresses a demonstrable risk.[28]

D. JCA's Answer

50. In their answer, JCA argues that the Commission should reject PSE&G's answer because it does not provide any information not found in the original petition. JCA also restates that the five projects are routine.

[28] PSE&G Answer at 13 citing *Public Service Electric and Gas Company*, 129 FERC ¶ 61,300 at P 48 (2009); *Public Service Electric and Gas Company*, 126 FERC ¶ 61,219 at P 70 (2009); *PPL Electric Utilities Corporation, et al.*, 123 FERC ¶ 61,068 at P 51 (2008) (finding that CWIP and abandoned plant cost recovery incentives "follow" the project).

IV. Discussion

A. Procedural Matters

51. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[29] the timely, unopposed interventions serve to make the entities that filed them parties to this proceeding.

52. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[30] prohibits an answer to a protest and/or answer unless otherwise ordered by decisional authority. We accept PSE&G's and JCA's answers as they assisted us in our determination.

B. Request For Clarification

53. We deny PSE&G's request for clarification regarding whether the Commission's decision to review projects on a case-by-case basis meant the Commission would ignore group financial impacts or risks of transmission projects. As the Commission stated in the December 30 Order, a company may file for incentives for numerous individual and unconnected projects at the same time and even in a single filing, but the company still must provide sufficient justification for why each project qualifies for incentives.[31] An applicant may submit whatever information the applicant considers necessary to demonstrate the risks or challenges it faces with respect to each project for which it seeks transmission incentives.

C. Commission Determination

54. In 2005, Congress added section 219 of the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities. The Commission subsequently issued Order No. 679, which sets forth the criteria by which a public utility may obtain transmission rate incentives pursuant to section 219. Order No. 679 interpreted section 219 to require that an applicant seeking incentive rate treatment for transmission infrastructure investments demonstrate that the facilities for which it seeks an incentive either ensure

[29] 18 C.F.R. § 385.214 (2011).

[30] 18 C.F.R. § 385.213(a)(2) (2011).

[31] December 30, 2010 Order, 133 FERC ¶ 61,273 at P 45.

reliability or reduce the cost of delivered power by reducing transmission congestion.[32] The Commission also found in Order No. 679 that an applicant must demonstrate a nexus between the incentives being sought and the investment being made.[33]

55. We find that all five projects meet the threshold requirement of Section 219 because they qualify for the rebuttable presumption established in Order No. 679 for projects approved through a regional transmission planning process that makes the findings discussed below. However, we find that only three of the projects satisfy the nexus test established in Order No. 679. Therefore, we grant the requested incentives for those three projects: the Burlington-Camden Project, West Orange Project and Mickleton-Camden-Gloucester Project, and deny the requested incentives for the two remaining projects: the Middlesex Rack Project and Bayonne-Marion Project.

1. Section 219 Requirement

56. Order No. 679 establishes a rebuttable presumption that the section 219 threshold requirement is met if a transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission, or a project has received construction approval from an appropriate state commission or state siting authority.[34] In Order No. 679-A, the Commission clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which the transmission project is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.[35]

57. We find that each of the Projects individually satisfies this requirement of section 219 as a result of the rebuttable presumption established in Order No. 679. Each project was vetted and approved as part of PJM's 2009 and 2010 RTEPs as a baseline project. This approval means that PJM made a determination that each of the Projects reduces congestion or ensures PJM's ability to continue to serve load reliably. In this regard, the Commission has held that the RTEP constitutes "a fair and open regional planning process" for the purposes of the rebuttable presumption provided in Order No. 679.[36]

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[32] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

[33] *Id*. P 48.

[34] *Id*. P 58; 18 C.F.R. § 35.35(i) (2011).

[35] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

[36] *See, e.g.*, *Duquesne Light Co*., 118 FERC ¶ 61,087, at P 62-66 (2007); *see also BG&E*, 120 FERC ¶ 61,084 at P 41, *reh'g denied*, 122 FERC ¶ 61,204 (2008).

2. Nexus Test

58. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate a nexus between the incentives being sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[37]

59. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. In *BG&E*, the Commission provided guidance on the factors that it will consider when determining whether a project is routine.[38] The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.[39]

60. More recently, the Commission stated that an applicant may demonstrate that several individual projects are appropriately considered as a single overall project based on their characteristics or combined purpose, and seek incentives for that single overall project.[40] The Commission has also stated that if the applicant is unable to satisfy that criterion, then the applicant may still file a single application for incentives, but the Commission will consider each individual project separately in applying the nexus test and determining whether each project is routine or non-routine.[41]

61. We find that the Burlington-Camden, West Orange, and Mickleton-Camden-Gloucester Projects are each non-routine and satisfy the nexus test. However, we find

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[37] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

[38] *BG&E*, 120 FERC ¶ 61,084 at P 52-55.

[39] *Id*. P 54.

[40] *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273 at 45 (2010) (citing *PacifiCorp*, 125 FERC ¶ 61,076 (2008)).

[41] *Id.*

that the Middlesex Rack Project and the Bayonne-Marion Project are each routine and therefore do not satisfy the nexus test for the reasons discussed below.

a. Burlington – Camden Project

62. We find that PSE&G has adequately demonstrated that the Burlington – Camden Project is not routine, and thus, satisfies the nexus test. We find that this project is not routine based on its scope, effects, and risks and challenges. The scope of the project is significant, with an estimated cost of $381 million, approximately 27 percent of PSE&G's net transmission plant in service. PSE&G expects to spend up to $125 million a year for this project, a substantial increase in PSE&G's annual transmission investment.[42] PSE&G therefore faces the risk of a credit rating downgrade resulting in increased capital costs and increased rates for consumers. The project is 35 miles long, with approximately 7 miles of underground circuits.[43] The project will provide annual congestion savings to both New Jersey and PECO loads. The project also has the effect of ensuring reliability by addressing NERC Category C voltage violations. We also find that the project faces significant siting, construction, regulatory, financial and environmental risks, as well as risks resulting from long lead times. For example, the project requires many permits and approvals at the federal, state, regional, and local levels, including from the United States Army Corps of Engineers, United States Coast Guard, Federal Aviation Administration, the New Jersey Department of Environmental Protection, and the New Jersey Board of Public Utilities. These approvals are required, in part, because the project will be built across navigable waters, near the habitats of protected species and near an airport. In this case, the Commission finds that the combination of financial and regulatory risks satisfy the risk criteria of the nexus test.

63. We reject NJBPU's protest regarding differences in congestion benefit claims between this docket and Docket No. ER11-1985-000 in which PSE&G previously requested incentives for this project. The argument is not germane as it does not substantively challenge the basis of the congestion benefit estimate that PSE&G submitted in this proceeding.

b. West Orange Project

64. We find that PSE&G has adequately demonstrated that the West Orange Project is not routine and thus satisfies the nexus test.

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[42] Schedule MAW-1 from Exhibit No. PEG-2A.

[43] Filing, Exhibit No. PEG-1 at 17-18.

65. We find that this project is not routine based on its scope, effects, and risks and challenges. The scope of the project is significant, as it is estimated to cost $336 million, approximately 24 percent of PSE&G's net transmission plant in service. PSE&G expects to spend up to $114 million a year for this project, a substantial increase in PSE&G's annual transmission investment.[44] PSE&G therefore faces the risk of a credit rating downgrade resulting in increased capital costs and increased rates for consumers. The project is 55 miles long.[45] The project will provide congestion savings to New Jersey loads. It also reduces congestion on the Branchburg-Reading-Roseland circuits, as well as other circuits in the JCPL area.[46] The project ensures reliability by addressing NERC Category C voltage violations. We also find that the project faces significant siting, construction, regulatory, financial and environmental risks, as well as risks resulting from long lead times. For example, the project requires many permits and approvals at the federal, state, regional, and local levels, including from the United States Army Corps of Engineers, United States Fish and Wildlife Service, Federal Aviation Administration, the New Jersey Department of Environmental Protection, and the New Jersey Board of Public Utilities. Some of the approvals are necessary because the project will be constructed through part of the Ash Brook Reservation, near the habitats of a number of protected species, and near an airport. In this case, the Commission finds that the combination of financial and regulatory risks satisfy the risk criteria of the nexus test.

66. We reject NJBPU's argument that the West Orange Project is routine because the project upgrades an existing line and because a portion of the project has already been completed. There is nothing inherent about line upgrades making them less worthy of incentives than a new project. Upgrades may face many of the same financial risks while still having the same effects and scope as new construction. The Commission has also made clear that while it will not grant incentives for a project that is completed before an application for incentives,[47] projects at an earlier stage may be eligible for incentives even if the project is in development.[48]

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[44] Schedule MAW-1 from Exhibit No. PEG-2A.

[45] *Id.*

[46] Filing, Exhibit No. PEG-1 at 16-17.

[47] *Commonwealth Edison Company*, 122 FERC ¶ 61,037 (2008).

[48] *Northeast Utilities Service Company*, 124 FERC ¶ 61,044, at P 63 (2008).

c. Mickleton-Camden-Gloucester Project

67. We find that PSE&G has adequately demonstrated that the Mickleton-Camden-Gloucester Project is not routine, and thus satisfies the nexus test.

68. We find that this project is not routine based on its scope, effects, and risks and challenges. The scope of the project is significant, as it is estimated to cost $308 million, approximately 22 percent of PSE&G's net transmission plant in service. PSE&G expects to spend up to $133 million a year for this project, a substantial increase in PSE&G's annual transmission investment.[49] PSE&G therefore faces the risk of a credit rating downgrade resulting in increased capital costs and increased rates for consumers. The project is 20 miles long, including 8 miles of underground circuits.[50] This project is the second-half of the Southern Reinforcement Plan along with the Bayonne-Camden Project. PSE&G estimates that the entire Southern Reinforcement Plan will provide an average annual congestion benefit of $10 million to New Jersey loads and $9 million to the PECO region. PSE&G also asserts that the project will resolve projected NERC Category C voltage violations. We also find that the project faces significant siting, construction, regulatory, financial and environmental risks, as well as risks resulting from long lead times. For example, the project requires many permits and approvals at the federal, state, regional, and local levels, including from the United States Army Corps of Engineers, United States Fish and Wildlife Service, Federal Aviation Administration, the New Jersey Department of Environmental Protection, and the New Jersey Board of Public Utilities. These approvals are required, in part, because the project will be built across navigable waters, near the habitats of protected species, and near an airport. In this case, the Commission finds the combination of financial and regulatory risks satisfy the risk criteria of the nexus test.

69. We agree with the NJBPU that the Mickleton-Camden-Gloucester Project and the Burlington-Camden Project are to be treated separately for the sake of incentive rate treatment. When making our incentive decision, we applied the nexus test for each project individually, and the incentives will apply to each project separately.

d. Middlesex Switch Rack Project

70. We find that the Middlesex Switch Rack Project is routine in nature and does not present the scope, effects, and risks or challenges that merit incentive rate treatment.

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[49] Schedule MAW-1 from Exhibit No. PEG-2A.

[50] *Id.*

71. The estimated cost of the project, while significant, is far less than that of the other PSE&G projects for which the Commission is here granting incentives.[51] The project also faces lesser regulatory risks than the projects discussed above. We note that the status of the project as a baseline project in PJM's RTEP does not change this analysis. The Commission has explained that not all baseline projects in PJM's RTEP automatically qualify for incentive rate treatment.[52]

72. Our finding that this project is routine in nature does not mean that it will be easy to complete. A project may be difficult to construct, but that alone does not mean it qualifies to receive transmission rate incentives under section 219 and Order No. 679.[53] While the project will be built next to an active train spur, nothing in the filing persuades the Commission to believe that the associated risks make the project non-routine. Therefore, we find that the Middlesex Switch Rack Project fails the Commission's nexus test and is not eligible for the requested incentives.

e. **Bayonne – Marion Project**

73. The Commission finds that the Bayonne – Marion Project is routine in nature and does not present the scope, effects, and risks or challenges that merit incentive rate treatment.

74. The estimated cost of the project, while significant, is far less than that of the other PSE&G projects for which the Commission is here granting incentives. The project also faces lesser regulatory risks. We note that the status of the project as a baseline project in PJM's RTEP does not change this analysis. The Commission has explained that not all baseline projects in PJM's RTEP automatically qualify for incentive rate treatment.[54]

75. Our finding that this project is routine in nature does not mean that it will be easy to complete. A project may be difficult to construct, but that alone does not mean it qualifies to receive transmission rate incentives under section 219 and Order No. 679.[55] Therefore, we find that the Bayonne – Marion Project fails the Commission's nexus test and is not eligible for the requested incentives.

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[51] *Id*. at 17-18.

[52] *Commonwealth Edison Co. and Commonwealth Edison Co. of Ind.*, 124 FERC ¶ 61,231, at P 18 (2008) (ComEd Order).

[53] OG&E Order, 135 FERC ¶ 61,038 at P 39.

[54] ComEd Order, 124 FERC ¶ 61,231 at P 18.

[55] OG&E Order, 135 FERC ¶ 61,038 at P 39.

3. Specific Incentives and Total Package of Incentives

76. PSE&G requests 100 percent CWIP, 100 percent abandonment cost recovery, and authority to assign incentives to an affiliate for all of the Projects. As discussed above, we find that three projects (the Burlington-Camden Project, West Orange Project, and the Mickleton-Camden-Gloucester Project) satisfy both the section 219 threshold requirement and the nexus test. As further detailed below, we will grant the requested incentives with respect to each of these three projects.

a. CWIP

77. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP costs in rate base.[56] We noted that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.[57] We find that PSE&G has shown a nexus between the proposed CWIP incentive and its investment in each of the three projects individually.

78. Consistent with Order No. 679, the Commission finds that authorizing 100 percent CWIP for PSE&G for these three projects would enhance its cash flow, reduce interest expense, assist PSE&G with financing, and improve PSE&G's coverage ratios used by rating agencies to determine credit quality, by replacing non-cash AFUDC with cash earnings. This, in turn, will reduce the risk of a downgrade in PSE&G's debt ratings. The Commission also finds that allowing PSE&G to include 100 percent CWIP in its rate base will result in better rate stability for customers. As explained in prior orders,[58] when certain large-scale transmission projects come on line, there is a risk that consumers may experience "rate shock" if CWIP is not permitted in rate base. By allowing CWIP in rate base, the rate impact of each of the three projects can be spread over the construction period and will help reduce rate shock.[59]

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[56] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

[57] *Id*. P 115.

[58] *See, e.g.*, *PPL*, 123 FERC ¶ 61,068 at P 43; *Amn. Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

[59] *See, e.g.*, *PPL*, 123 FERC ¶ 61,068 at P 43.

79. The Commission finds that the proposed accounting procedures in Exhibit No. PEG-2 of PSE&G's filing sufficiently demonstrate that it has accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent it is allowed to include CWIP in rate base.

b. Abandonment

80. In Order No. 679, the Commission found that abandonment cost recovery is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[60] We find that PSE&G has demonstrated a nexus between the risks of each of the three projects individually and this incentive. We find that this incentive will be an effective means to encourage each of the three projects' completions. For example, in addition to the challenges presented by their scope and size, each project requires approvals from municipalities within New Jersey, state siting approvals, and various federal approvals. These factors introduce a significant element of risk; authorizing abandonment cost recovery will help ameliorate this risk by providing PSE&G with more certainty as it moves forward. Thus, we will grant PSE&G's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the three projects, provided that the abandonment is a result of factors beyond PSE&G's control, which must be demonstrated in subsequent section 205 filings for recovery of abandoned plant costs and the Commission also would consider claims concerning the prudency of any abandonment costs at that time.[61]

c. Assignment of Incentives to Affiliates

81. Consistent with the Commission's findings in prior orders,[62] the Commission grants PSE&G's request for authority to assign the above-granted incentives to an affiliate, subject to the requirement that, if PSE&G elects to assign its incentives to an affiliate, that affiliate must make a filing under section 205 of the FPA to incorporate into its rates any such incentives.

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[60] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

[61] *Id*. P 165-66.

[62] *PPL,* 123 FERC ¶ 61,068 at P 51-52; *PSE&G,* 126 FERC ¶ 61,219 at P 70.

d. Total Package of Incentives

82. As we have stated above, the incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects where it found these incentives to be appropriate.[63]

83. We find that PSE&G has shown that the incentives for Burlington-Camden, the West Orange, and the Mickleton-Camden-Gloucester projects are tailored to address the demonstrable risks and challenges faced by each.[64] As the Commission has stated, PSE&G faces significant risks and challenges in constructing the three projects; we agree with PSE&G that authorizing CWIP and abandonment cost recovery will encourage investors to invest in the three projects despite these risks. In addition, allowing the transfer of these incentives to an affiliate designated to build these projects is consistent with Commission precedent.

4. Additional Arguments Raised in Protests

84. With respect to the protests, we disagree with Protestors that the Burlington-Camden Project, West Orange Project, and Mickleton-Gloucester Camden Project are routine because they are 230 kV projects and will be constructed only in New Jersey. As discussed above, we find that incentives are warranted for these three projects given the facts presented.

85. We reject JCA's argument that PSE&G's is ineligible for incentives for these projects because it is contractually committed to PJM to build the projects. In *Northeast Utilities*,[65] the Commission rejected the assertion that projects in ISO-NE's Regional System Plan are ineligible for incentives merely because the transmission owner may have a contractual obligation to build them. The Commission found that this argument was a narrow interpretation of Order No. 679 and that accepting it would deny the

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[63] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55; *see, e.g.*, *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 122 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne*, 118 FERC ¶ 61,087 at P 55 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery).

[64] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

[65] *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044, at P 89 (2008) (*Northeast Utilities*).

Commission the ability to exercise the authority it was expressly granted under section 219.[66] These findings apply with each incentive. These findings are equally applicable here to JCA's argument.

86. We reject NJBPU's argument that PSE&G's 2010 Moody's report shows that PSE&G will not suffer any downgrade in its credit rating in the absence of incentives and therefore PSE&G has not demonstrated a need for CWIP. To the contrary, the 2010 Moody's report supports PSE&G's request for incentives, as it states: "[w]e consider certain aspects of FERC's regulation of the transmission business to be positive for PSE&G's credit. These include…FERC's approval of premium ROEs and the inclusion of construction work in progress in rate base for certain new transmission projects…."[67] In addition, PSE&G includes in its filing Standard & Poor's reports that further support its filing, including a report that states: "formula rate treatment, incentive rate treatment, recovery of construction-work-in-progress costs in rate base, and abandonment recovery, [are] credit supportive."[68]

87. The Commission rejects NJBPU's argument that AFUDC is a sufficient mechanism for rate recovery for the projects. Order No. 679 states that CWIP will "provid[e] up-front regulatory certainty, rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by transmission development programs." [69] For the reasons discussed above, we find that granting the CWIP incentive is appropriate for these three projects.

88. The Commission also denies the Protestors' request to set this matter for trial-type evidentiary hearing. The Commission sets matters for a trial-type evidentiary hearing only to resolve material issues of fact. In this case, we are able to determine whether the Projects satisfy the requirements of Order No. 679 based on the record presented in PSEG's petition.

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[66] *Id*.

[67] Filing, Exhibit No. PEG-2F, at 2-3.

[68] *Id*. at 3.

[69] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at 115.

<u>The Commission orders</u>:

PSE&G's requests for CWIP Recovery and Abandoned Plant Recovery are hereby granted for three of the five projects presented, Burlington-Camden, West Orange, and Mickleton-Camden-Gloucester, and denied for the remaining two, Middlesex Switch Rack and the Bayonne-Marion, as discussed in the body of the order.

By the Commission. Commissioner Moeller concurring in part and dissenting in part with a separate statement to be issued at a later date.
Commissioner Norris concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. and Public Service Electric and Gas Company — Docket Nos. ER11-3352-000, ER11-1985-001

(Issued June 13, 2011)

NORRIS, Commissioner, *concurring*:

I concur in the decision in today's order to grant Public Service Electric and Gas Company's (PSE&G) request to include 100 percent of prudently-incurred construction work in progress (CWIP Recovery) in its rate base and to recover 100 percent of prudently-incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond PSE&G's control (Abandoned Plant Recovery) for three of the five transmission projects included in its application.

In my partial dissent from the Commission's order on PSE&G's prior request for CWIP Recovery and Abandoned Plant Recovery for these projects,[1] I noted that CWIP Recovery can be a useful regulatory tool in circumstances where an entity is embarking on large new investments in transmission infrastructure that will substantially increase its rate base. My partial dissent also noted that while our transmission rate incentives policy relies heavily on a determination of whether a transmission project is "routine" or "non-routine", this paradigm may not be well suited to addressing the question of whether CWIP Recovery should be granted.[2]

Here, PSE&G explains that the estimated total cost of the five projects at issue is approximately $1.28 billion, an amount that would almost double its current net transmission plant of $1.4 billion.[3] These projects have estimated in-service dates all within a two-year period from 2013 to 2015. PSE&G demonstrates that, in light of this substantial investment in a short amount of time, CWIP Recovery will provide tangible benefits to both the company and consumers, including an estimated $41 million in consumer savings on a net present value basis.[4]

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[1] *PJM Interconnection, L.L.C.,* 133 FERC ¶ 61,273 (2010), Norris, *dissenting in part*.

[2] *Id.* at 3.

[3] PSE&G Filing at 64-65.

[4] PSE&G Filing, Exhibit No. PEG-2 at 34.

While today's order grants CWIP Recovery to only three of the five projects at issue, two sets of facts persuade me to join the majority. First, today's decision grants the requested CWIP Recovery with respect to the three largest projects, which together represent 80 percent of the $1.28 billion in total investment. This decision should result in realizing a substantial portion of the $41 million in consumer savings noted above.

Second, the Commission recently issued a Notice of Inquiry on transmission rate incentives. In that Notice of Inquiry, the Commission specifically seeks comment on whether it is appropriate to evaluate requests for CWIP Recovery by risks and challenges solely on a project-by-project basis, or whether there are other appropriate bases for evaluating such requests, such as the aggregate risks and challenges of all the projects an applicant may be undertaking within a particular time period.[5] I hope that the record developed in response to the Notice of Inquiry will help inform the Commission as to the appropriate way to address incentives requests similar to PSE&G's going forward.

For the reasons noted above, I concur.

John R. Norris, Commissioner

[5] *Promoting Transmission Investment Through Pricing Reform*, Notice of Inquiry, 76 Fed. Reg. 30,869 (May 27, 2011), 135 FERC ¶ 61,146 (2011).